

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

APPELLANT'S BRIEF AND JOINT APPENDIX

697

United States Court of Appeals

DISTRICT OF COLUMBIA.

*United States Court of Appeals
for the District of Columbia*

No. 9622

FILED SEP 26 1947

Joseph W. Starnes
CLERK

ALEXANDER CAMPBELL, *Appellant,*

v.

KATHLEEN CAMPBELL, *Appellee.*

**Appeal from the District Court of the United States for the
District of Columbia.**

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JURISDICTIONAL STATEMENT.

In the District Court of the United States for the District of Columbia, appellant filed a Complaint for divorce on the ground of adultery and for a partition of real and personal property (Joint App. 2, 3, 4, 5). Following trial of the cause the Court granted an Order for Judgment for absolute divorce and division of property (Joint App. 7, 8).

Jurisdiction was conferred on the District Court by Sections 403 and 409, Title 16, D. C. Code, 1940 Edition, and on this Court by Section 101, Title 17, D. C. Code, 1940 Edition.

STATEMENT OF THE CASE.

The appellant, Alexander Campbell, filed in the District Court a complaint for divorce on the ground of adultery, naming as correspondent, Frank Hendrix.

The complaint asserted that the property rights of the parties were to be determined in this action. Further, it was alleged in the complaint that two pieces of improved real estate, both located in the District of Columbia, and identified as 1607 - 31st Street, Northwest and 1535 - 34th Street, Northwest, were owned by appellant and appellee as tenants by the entirety (Joint App. 3).

The complaint further alleged that plaintiff had repaid the sum of \$2850.00 on loans or other personal obligations of the defendant. The complaint then alleged that plaintiff had paid large sums of money on the trusts secured by the aforementioned real estate and that he, being a highly skilled carpenter, had greatly added to the value of the said real estate by his personal effort and work in remodeling, altering, painting, making additions thereto and repairing said realty (Joint App. 3).

The complaint, accordingly, prayed inter alia, that the Court determine and adjudge a fair and equitable property settlement for plaintiff with respect to all the real estate and personal property, and that it be partitioned and divided according to the interest and shares of each (Joint App. 5).

At the outset of the trial proceedings, counsel for appellant, in requesting a ruling as to the order of calling his witness, informed the Court that a division of property was involved in the case (Joint App. 9). Thereafter, the appellant, who was the first witness called, testified that property rights were involved (Joint App. 9). Further, in response to a question by the Court, appellant's counsel stated there was a division of property involved (Joint App. 26). Following this, there was a colloquy between appellant's counsel and the trial Justice upon which occasion, the Court was again informed as to the demand in appellant's complaint for a division of the property. At that time appellant's counsel pointed out the theory upon which the claim for division of the real property was being made, namely, that appellant contributed money for use in reducing the trusts secured by the real estate, that he paid

some of the real estate taxes, and that he remodeled and made improvements on the premises located at 1607 - 31st Street, N. W. (Joint App. 30).

Defendant admitted that she placed the title to both pieces of real estate in her and Mr. Campbell's names (Joint App. 26, 32, 33), that there were mortgages outstanding on both pieces of real estate; that the payments on these mortgages were in arrears; that she was indebted in the amount of \$1500.00 on a loan for which she had pledged stock as collateral; and that she was indebted to her sister for \$1350.00, (Joint App. 34). She also admitted that "sometimes" she "saw" appellant's pay envelopes (Joint App. 33, 34).

During the course of the trial, and prior to the time that appellant, or any witness in his behalf, had testified as to money contributions or improvements to the real estate made by appellant, or as to his interest therein, the Trial Justice stated he was not concerned much about the disposition of the property because he was going to award all the property that she had to her (Joint App. 21).

Thereafter, Thomas W. Blumenauer, an employee of the Columbia Federal Savings and Loan Association, testified that the original mortgage on the 1607 - 31st Street property was placed in October, 1938, in the amount of \$10,000.00; that the balance due on said mortgage as of April 19, 1941 (date appellant and appellee were married) was \$8,922.09, and that payments on said obligation were then in arrears \$525.05. He further stated that title to the property was placed in the names of both appellant and appellee on June 20, 1942; that payments on the mortgage became current on April 21, 1942, and that the amount of the mortgage had been reduced to \$4,648.91 as of July, 1945. On the date Mr. Blumenauer testified (April 27, 1947), payments on the loan were in arrears \$118.88 (Joint App. 22, 23).

Following, Theodore P. Cowgill, an employee of the Riggs National Bank testified that on April 22, 1943, appellant and appellee obtained a loan secured by stock at said

The complaint asserted that the property rights of the parties were to be determined in this action. Further, it was alleged in the complaint that two pieces of improved real estate, both located in the District of Columbia, and identified as 1607 - 31st Street, Northwest and 1535 - 34th Street, Northwest, were owned by appellant and appellee as tenants by the entirety (Joint App. 3).

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Following, Theodore P. Cowgill, an employee of the Riggs National Bank testified that on April 22, 1943, appellant and appellee obtained a loan secured by stock at said

Bank in the amount of \$1,000.00; that the Bank sent \$1,500.00 to the First and Merchants National Bank of Richmond, Virginia, in payment of a note, the proceeds of the \$1,000.00 loan being a part of the amount sent. In turn, the Richmond Bank transmitted the stock securing its loan to the Riggs Bank, which retained it as security for the \$1,000.00 loan. The last payment on the latter loan was made on April 17, 1944 (Joint App. 24, 25).

Thereafter, Alexander Campbell, appellant, was recalled. He testified that he was regularly employed in his trade as a carpenter during the years 1941 through 1944, and that he had agreed with appellee to make the payments on the property loans which he did by turning the money over to her (Joint App. 10, 11). Appellant and his wife obtained a loan for \$1,000.00 at the Riggs National Bank, secured by their stock, the proceeds of which were used in paying off a \$1,500.00 loan in the First and Merchants Bank in Richmond, Virginia. Appellant made two payments on the \$1,000.00 loan in the total amount of \$355.00, by his personal checks, and made other payments on the loan, but the money used in making such payments was turned over to Mrs. Campbell by appellant, as she requested, and paid by her. (Joint App. 12,13).

In 1941 appellant made improvements on the fourth floor of the property located at 1607 - 31st Street, N. W., valued at \$550.00; in 1942 he made improvements on the second floor of said property valued at \$560.00; in 1943 he made improvements on the first floor of this property, including the building of an extension to the back of the house, the reasonable value of such work being \$1,600.00; and, also, he made improvements on the ground floor of the property, the value of the work being \$1,200.00. The values stated by appellant are for the materials furnished by him and for the work he did (Joint App. 13, 14, 15, 16).

At the time appellant and defendant were married, the latter was indebted to her sister on a loan, in satisfaction of which the amount of \$1,150.00 was paid by Mrs. Campbell with money given to her by appellant (Joint App. 17).

There was a contractor's claim against appellee for work done on the premises at 1535 - 34th Street, N. W., prior to appellant's marriage to appellee, which appellant thereafter settled for \$275.00. On four occasions appellant paid the taxes on the said 34th Street premises (Joint App. 17).

Michael Tighe, a carpenter, assisted the appellant in building the extension to the premises at 1607 - 31st Street, N. W., and in making screens, etc., and he thought the values assigned by appellant for the various improvements made by appellant to this property were reasonable. (Joint App. 19, 20). Appellant had been regularly and gainfully employed during the time in question; and he would work two, three and four months at a time, then, when the job would finish, he might be out of a job for a week or two (Joint App. 20).

The Court ruled orally in open Court as to his conclusions of law and directed counsel to prepare an order in conformance therewith (Tr. 229, 231, 232, 233). On March 19, 1947, the Court signed an order announcing his findings and granting judgment for absolute divorce and division of property.

No opinion or memorandum was filed by the Court.

This appeal is taken from the division of property as made by the lower Court in the above-mentioned order granting judgment.

STATUTES AND RULES INVOLVED.

Section 403, Title 16, D. C. Code, 1940 Edition:

"A divorce from the bond of marriage * * * may be granted for adultery, * * *."

Section 409, Title 16, D. C. Code, 1940 Edition:

"Upon the entry of a final decree of * * * divorce a vinculo, * * * all property rights of the parties in joint tenancy or tenancy by the entirety shall stand dissolved and the Court, in the same proceeding in which such decree is entered, shall have power and jurisdiction to award such property to the one lawfully

entitled thereto or to apportion the same in such manner as shall seem equitable, just and reasonable."

Federal Rules of Civil Procedure, Rule 52(a):

"In all actions tried upon the facts without a jury, the Court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment; * * *."

STATEMENT OF POINTS.

1. The Court erred in failing to make findings as to title to realty and contributions and improvements to property by appellant.
2. The Court erred in disregarding substantial, unbiased and uncontradicted testimony with respect to the division of property.
3. The judgment of the Court as it relates to the division of property constitutes an abuse of discretion by the Court and produced an inequitable result.

SUMMARY OF ARGUMENT.

Appellant's appeal is based solely on the division of property made between the parties. The judgment rendered in the case ordered the real property to be vested in the wife, apparently on the theory that the wife had acquired it prior to the marriage and that title was vested in her at the time appellant and appellee were married. The Court ignored the fact that the real property was held by the parties as tenants by the entirety at the time appellant filed his complaint, and made no finding as to the title of the realty as of any time after complaint was filed. Furthermore, the Court failed to make findings of fact as to the money contributions and physical improvements made to the real estate by the appellant or as to his contributions in liquidating personal loans of appellee and in payment of other obligations.

Conflicting testimony was introduced on the divorce issue, yet the Court made findings and conclusions of law thereon in appellant's favor. In contrast, no testimony was given on appellee's behalf contradicting the evidence as to the physical improvements made to the realty by appellant. On other phases of the property question concerning the money paid by appellant in liquidation of the real estate mortgages and to pay off appellee's personal loans, and of other payments he made, there was substantial, material and unbiased evidence introduced on behalf of appellant. Nonetheless, the Court's conclusions of law are in this respect in disregard of such evidence and in favor of appellee.

Appellant contends that the judgment of the Court as to the manner in which it divided the property between the parties is in error. In comparison with a great many State decisions presenting a substantially similar property question, the judgment in the instant case is devoid of an effort to reach a reasonable and equitable division. Moreover, the division made allows appellee to profit by her own misconduct.

ARGUMENT.

- 1. The Court erred in failing to make findings as to title to realty and contributions and improvements to property by appellant.**

The Order of the Court granting judgment for absolute divorce and for division of property, fails to make findings as the state of the title to the real estate involved at the time complaint was filed, or thereafter, through the date of granting judgment. Appellant's complaint alleged that the real estate was owned by plaintiff and defendant as tenants by the entirety. This allegation is not denied by defendant in her Answer (Joint App. 6), and therefore stands admitted under Rule 8 (d) of the Rules of Civil Procedure. Furthermore, appellee admitted that she placed the title to the real estate in her and Mr. Campbell's names (Joint App. 26, 32, 33).

Moreover, the Court made no finding with respect to the money contributions made by appellant to appellee for the payment of appellee's loans, and for liquidating the indebtedness secured by the real estate. Also the Court failed to make a finding with respect to the improvements made by appellant on the premises located at 1607 - 31st Street, N.W.

The defendant admitted there were mortgages outstanding on both properties in 1941, the year of her marriage to appellant, although she did not know the amounts thereof (Joint App. 34). She admitted two other outstanding obligations in the amounts of \$1500 and \$1350 (Joint App. 34). Impartial and unrefuted testimony was adduced showing the reduction in the amount of the mortgage on the 31st Street property during the period of their marital life. In the two and one-half year period prior to the marriage in 1941, the amount of the loan had been reduced by only \$1078. Furthermore, at the time of the marriage the payments on the loan were in arrears; yet, a year after the marriage the loan payments had become current. As to the loan itself, in the 51 months of appellant's married life the principal had been reduced \$4273.

We come now to the \$1500 loan, placed with the First and Merchants Bank of Richmond, which appellee admits having made. Furthermore, she asserts this loan was repaid with her own money. Then she goes on to emphasize that this loan was not repaid with money advanced by her husband, but with her money (Joint App. 35). In contrast, there is the unbiased testimony of Mr. Cowgill of the Riggs Bank, who stated that the proceeds of the \$1000 loan obtained by appellant and appellee on April 22, 1943, were sent to the Richmond Bank in partial payment of the \$1500 loan. Mr. Cowgill testified that the Bank did not keep a record of who made the payments on this latter loan, although the last payment thereon was made in April, 1944. Moreover, two checks were before the Court (though apparently not introduced in evidence) which were written out in Mrs. Campbell's handwriting but signed by appellant. These two checks totalled \$355, and both were made to the Riggs

Bank and applied in liquidating the \$1000 loan. With regard to other payments on this loan, Mr. Campbell gave money to appellee with which to make the payments, because appellee had requested him to handle it that way (Joint App. 13).

Appellant was regularly employed in his trade as a carpenter, and during the period of their married life he turned the bulk of his earnings over to Mrs. Campbell (Joint App. 11, 13). In this connection, the appellee admits that Mr. Campbell turned some of his pay envelopes over to her (Joint App. 33, 34).

Appellant made valuable improvements on the premises at 1607 - 31st Street, N.W. Mr. Tighe, also a carpenter, helped appellant in making some of these improvements and he corroborated the values assigned by appellant for the work done. No evidence was offered by appellee, or on her behalf, contradicting or denying this testimony.

In spite of the formidable evidence adduced as to appellant's contributions and improvements to the property, the Court failed to make findings in respect thereto. Appellant contends that these many contributions and improvements to property are a vital part of his case and were consistent with the allegations made in the Complaint.

Appellant asserts, therefore, that the Court erred in failing to make findings thereon as required by Rule 52 (a), Rules of Civil Procedure. In further support of this contention, appellant relies on the cases of *Ruppert v. Ruppert*, 77 App. D. C. 65, 134 F. (2d) 497 and *Rainey v. Rainey*, 76 App. D. C. 341, 131 F. (2d) 349.

Counsel for appellants are not unmindful of the long line of cases in this jurisdiction, such as *Shellman v. Shellman, et. al.*, 68 App. D. C. 197, 95 F. (2d) 108, wherein the necessary findings were impliedly made by reason of the conclusions of law reached by the Court. In that case, however, and in *Brown v. Metropolitan Life Insurance Company*, 69 App. D. C. 233, 234, 100 F. (2d) 98, in which it was stated, "where this Court can readily understand the questions presented precise findings are not absolutely essen-

tial", there was substantial evidence supporting the conclusions of law made. To the same effect are the cases of *Goodacre v. Panagopoulos et al.*, 72 App. D. C. 25, 27, 110 F. (2d) 716, and *Hurwitz v. Hurwitz*, 78 App. D. C. 66, 69, 136 F. (2d) 796.

Appellant contends that in the case at bar the conclusions of law relating to the division of property are not only not supported by the evidence, but are contrary to substantial, unbiased, and in part, uncontradicted testimony. In this view therefore, appellant submits that the above-cited cases, beginning with that of *Shellman v. Shellman*, *supra*, have no proper application to the instant case.

2. The Court erred in disregarding substantial, unbiased, and uncontradicted testimony with respect to the division of property.

It is significant to observe that the evidence adduced regarding the basis for the divorce itself, was in sharp conflict. Yet, in that respect, the Court made findings of fact and reached a conclusion of law, consistent therewith, which were in favor of appellant. From such action it might be deduced that the Court would apply a conforming standard of credibility to the testimony of witnesses in relation to the division of property. Such was not the case, however. Consequently there is ample justification to conclude that substantial and unbiased testimony, not inherently improbable, was disregarded.

The testimony of the officials of the Savings and Loan Association and the Riggs Bank was based in each case on documents maintained by the respective institutions. Moreover, they appeared to be disinterested witnesses, and their testimony had no reason to be biased or in anywise prejudiced.

With reference to the improvements made on the 31st Street property, Mr. Tigue's testimony as to the carpenter work he performed is uncontradicted. In addition, he corroborated the reasonableness of the values assigned by

appellant for the improvements the latter completed on this property. Indeed, the record contains no evidence on the part of appellee, or by anyone testifying in her behalf, contradicting either the fact of these improvements by appellant or the values thereof.

Appellant submits that the action of the Court in disregarding such substantial evidence as to the contributions and improvements to property made by appellant, brings the case at bar squarely within the holdings of this Court in the cases of *Stone v. Stone*, 78 App. D. C. 5, 136 F. (2d) 761 and *George v. Capital Traction Company*, 54 App. D. C. 144, 295 F. 965.

In the *Stone* case, *supra*, it was stated at page 8, as follows:

“In this case there was positive testimony, uncontradicted, and not inherently improbable. Neither a jury nor a judge is at liberty to disregard such evidence.”

3. The judgment of the Court as it relates to the division of property constitutes an abuse of discretion by the Court and produces an inequitable result.

Appellant concedes, at the outset, that unless the conclusions arrived at by the Court are clearly wrong, they will not be disturbed by the reviewing Court. *Snow v. Snow*, 50 App. D. C. 242, 270 F. 364 and *Palmer v. Strohecker, et al.*, 60 App. D. C. 312, 53 F. (2d) 924. In this case, however, appellant contends that the Court's conclusions as to the division of property fall within such category.

In establishing the arbitrary action of the Court concerning the division of property, it is necessary to review briefly certain of the facts. First, the complaint fully sets forth appellant's demands as to the division of property. Then, at the start of the trial counsel for appellant referred to such division in a side bar conference (Joint App. 9); after which appellant, the first witness called in the case, testified that property rights were involved (Joint App. 9). Again, the division of property was discussed in a colloquy between

the Court and appellant's counsel at a later stage of the trial, at which time counsel outlined the theory upon which appellant was proceeding with respect to such division (Joint App. 30). Furthermore, it should be borne in mind that the Court had initially ruled that the evidence with respect to the adultery charge should be completed before calling witnesses concerning the property rights (Joint App. 9). Nonetheless, before appellant, or any of the witnesses called in his behalf, had testified as to appellant's contributions and improvements to the property or his interest therein, the Court stated in a colloquy with appellee's counsel that he was not much concerned about the disposition of the property as he was going to award to defendant all the property she had (Joint App. 21). The judgment afterwards granted, as to the division of property, is precisely in accord with this earlier pronouncement by the Court. Appellant submits that action by the Court in a case where the judgment rendered appears to stem unmistakably from the Court's pre-determined opinion, constitutes an abuse of discretion. Particularly, must this be so, where substantial and unbiased evidence to the contrary is disregarded.

Appellant makes the further contention that the result produced in this case as to the division of property is inequitable. This can best be shown by a comparison with the results in other cases. No factual situation comparable to the property question presented in the case at bar has been discovered among the reported cases in this jurisdiction. However, a number of cases bearing similarity to the instant case as to property contributions and interests have been found in the State decisions, although with varying circumstances as to the party at fault in the divorce action, the time and manner of acquisition of the property, and the status of the title to the property at the time of marriage and at its dissolution. Notwithstanding the variations, these cases have a general factual vein common with the case at bar. In all of these State cases the division of property made is in sharp contrast with the distribution made in the instant case.

In the case of *Bristol v. Bristol*, 107 Nebr. 321, 185 N. W. 972, the wife, who brought the divorce action on the ground of cruelty, was possessed of a considerable amount of farm property at the time of her marriage. After the marriage the parties made their home upon plaintiff's property. By common consent the defendant assumed the management of the farms, used the earnings in support of the family, and in making improvements on the farms, etc. The Court stated that the defendant seeks

"to recover his equitable share of the accumulated property in the possession of the plaintiff which accrued through their joint efforts. This he may do where it is shown that the accumulated property in the name of the wife is the result of the joint earnings of the parties, and in such case the Court will inquire as to the source of the accumulated property, and in the exercise of reasonable discretion will divide the property between the parties, awarding the husband his equitable portion thereof, and may enter a judgment in favor of the husband for the equitable amount found to be due him." (185 N. W. 972, 974).

The Court then cited other cases and paraphrased the holding in the case of *Miller v. Miller*, 91 Nebr. 500, 136 N. W. 729, wherein it was held that the trial Court should consider all of the facts in evidence as to the property rights of the parties, the source from and the manner in which their property was accumulated, and should exercise a reasonable discretion in dividing the property between them.

Of similar effect is the case of *Soltysik v. Soltysik*, 317 Ill. 247, 148 N. E. 40, 41, 42, wherein it was said:

"In divorce cases, in settling property rights and decreeing alimony, the first question for consideration is the equitable rights of the parties in the property held and owned by them. If there is property held by one of them which has been accumulated by the joint efforts of the two or by the funds of both, then such property should be divided according to such equity as exists between them."

In the case of *Martin v. Martin*, 167 Wisc. 255, 167 N. W. 304, where the wife, who sued for divorce, had all the property in her name, it was held that the theory of the divorce statute there in effect was to provide for an equitable division of the property of the parties, including such property of the wife as was derived mediately or immediately from the husband. The opinion then went on to hold that money and labor put into the wife's property greatly enhancing the value of her estate constitutes an estate derived from the husband which may be distributed by the Court upon the granting of a divorce.

Of the same general import are the case of *Gurchke v. Gurchke*, 167 Mich. 404, 132 N. W. 1077; *Davis v. Davis*, (Texas Civ. App.), 108 S. W. (2d) 681; and *Haynes v. Haynes*, 197 Okla. 221, 169 P (2d) 563. Of similar result where only a joint bank account was in issue is the case of *Vogt v. Vogt*, 105 N. J. Eq. 566, 148 A. 618.

In the case of *Wacker v. Wacker*, (Vt., decided October 1, 1946), 49 A. (2d) 119, the wife sued for divorce on the ground of adultery. After marriage, the wife bought and paid for a farm, title to which was placed in the husband and wife as tenants by the entirety. With improvements and the personalty purchased for operation of the farm, the outlay cost the wife about \$60,000. She also contributed the money for operating the farm. The husband managed it, and while not successful, the work he did was such that his wife had complete confidence in his management. The lower Court made a finding that a fair recompense for his interest in and contribution to the property was \$3,000. Passing on this finding, the Court said, at page 120, that "the order decreeing the real and personal property to the petitioner and directing her to pay him \$3,000 does not show, as a matter of law, that the Court below either refused to exercise its discretion or abused it."

It is to be noted, in the *Wacker* case, *supra*, that the husband made no money contributions and also he was the adulterer. In contrast, in the case at bar, the husband made substantial money contributions to the wife which were

used in liquidating loans, both personal and those secured by the real estate. Also, he made valuable improvements to the premises located at 1607 - 31st Street, N. W.

On the theory of the aforementioned state decisions, appellant contends that he is entitled to receive a division of the property commensurate with his money and material contributions, and the failure of the Court to so provide in the judgment produced an inequitable result.

We cite other cases, which hold that a division of property between husband and wife in substantially equal shares has been held proper. In the case of *Deaton v. Deaton*, 276 Ky. 31, 122 S. W. (2d) 980, the purchase of a farm had been the joint enterprise of the husband and wife. Payments for its purchase and the improvements made thereon being made by both parties. In this case the Court decreed an undivided one-half interest in the farm to each spouse.

To the same general effect are the cases of *Chamberlain v. Chamberlain* (Iowa), 185 N. W. 983, and *Brown v. Brown*, 52 S. D. 58, 216 N. W. 587. In the latter case the wife owned the land at the time of the marriage and thereafter it was farmed by the husband. The property embraced in the lower Court's division included the joint accumulations and payments on the farm mortgage. The Court held that instead of making findings of expenses and profits, where there was no supporting evidence as to them, that the lower Court's substantially equal division of the property was proper.

On the basis of the holding in the *Brown case*, supra, appellant contends that this Court would be warranted in not only reversing the case at bar, but ordering an equal division of the jointly held property. It is manifest that the controlling law in this jurisdiction (Sec. 409, Title 16, D. C. Code, 1940 Edition) clearly authorizes such action.

At all events, appellant asserts that the result decreed in the instant case cannot be equitably aligned with any of the several state Court decisions cited herein, and that to permit the present judgment to stand is to allow the appellee to profit by her own misconduct.

CONCLUSION.

It is respectfully submitted that the judgment of the Court below, insofar as it pertains to the division of property, should be reversed and that this Court should by its mandate direct either an equal division of the jointly held property or a lien for appellant's equitable share as shown to have been advanced, loaned and contributed by him to appellee and the property.

JOSEPH A. RAFFERTY,
CLARENCE G. PECHACEK,
206 Southern Building,
Washington 5, D. C.
Attorneys for Appellant.

APPENDIX

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United States Court of Appeals

DISTRICT OF COLUMBIA.

No. 9622.

ALEXANDER CAMPBELL, *Appellant*,

v.

KATHLEEN CAMPBELL, *Appellee*.

Appeal from the District Court of the United States for the
District of Columbia.

JOINT APPENDIX.

District Court of the United States for the
District of Columbia.

Holding Civil Term.
Civil Action No. 30,833.

235 ALEXANDER CAMPBELL, 3301 Prospect Avenue,
N.W., Washington, D. C., *Plaintiff*,

v.

KATHLEEN CAMPBELL, 1607 31st Street, N.W.,
Washington, D. C., *Defendant*,

v.

FRANK HENDRIX, 1607 31st Street, N.W.,
Washington, D. C., *Correspondent*.

**Complaint for Absolute Divorce on Grounds of Adultery
and Partition of Real and Personal Property.**

(Filed September 27, 1945)

Plaintiff, Alexander Campbell, respectfully submits as follows:

1. That plaintiff, Alexander Campbell, is a citizen of the United States and a resident of the District of Columbia for more than one year last past.

2. That defendant, Kathleen Campbell, is a citizen of the United States and a resident of the District of Columbia.

3. That the correspondent, Frank Hendrix, is a citizen of the United States and a resident of the District of Columbia.

4. That plaintiff and defendant were married on to-wit the 19th day of April, 1941 in the State of Virginia; that no children were born of the marriage; that the property rights of the parties are to be determined by this action.

5. That plaintiff and defendant immediately after the aforesaid marriage returned to the District of Columbia

and have lived and cohabited as husband and wife until the happening of the grievances hereinafter set forth.

6. That the following real estate situated in the District of Columbia is owned by plaintiff and defendant as tenants by the entirety; Lot 2 in Square No. 1282, improved by brick dwelling, and further identified as 1607 31st Street, Northwest and Lot No. 173 in Square No. 1254, improved with dwelling and further identified as 1535 34th Street, Northwest.

236 7. That the following personal property owned jointly by the parties is in the possession, control and custody of the defendant; 50 shares Republic Steel; 22 (twenty-two) \$25.00 War Savings Bonds; 1 (one) \$50.00 War Savings Bond; said stocks and bonds were purchased by the plaintiff with his personal funds; that the following personal property owned by the plaintiff, purchased and paid for by the plaintiff, and issued in his name is in the possession of the defendant; 150 (one hundred fifty) shares General Realty and Utility Corporation and 50 (fifty) shares American Hide and Leather stock; that the following personal property is in the name of the defendant and in her possession, control and custody; 20 (twenty) shares Standard Oil of Kentucky; 5 (five) shares United States Steel; 5 (five) shares Radio Corporation; 5 (five) shares of Phillip Morris and 5 (five) shares of Montgomery Ward; plaintiff alleges that he repaid the sum of \$1500.00 on the last named stocks and securities which said loan had been placed thereon by the defendant before the marriage of the parties; that plaintiff further alleges that he repaid the sum of \$1,350.00 on pledges of personal property of the defendant to secure loans and other obligations, all of which were personal obligations of the defendant.

8. That the plaintiff has paid large sums of money on the trusts secured by the aforementioned real estate and has greatly added to its value by personal effort and work in remodeling, altering, painting, making additions thereto and repairing said premises; the plaintiff is a highly skilled carpenter by trade.

9. Plaintiff alleges that defendant, Kathleen Campbell and the corespondent, Frank Hendrix, committed adultery on many occasions in the District of Columbia between the 9th day of July, 1945 and the 20th day of August, 1945, at 1607 31st Street, Northwest; that said adultery was not committed with the consent or connivance of the plaintiff and said adulterous acts have not been condoned.

10. That plaintiff has not lived or cohabited with the defendant either voluntarily or otherwise since the discovery of the adultery aforesaid.

11. Plaintiff has always conducted himself as a loving and affectionate husband; that defendant however has demeaned herself in a cruel and inhuman manner towards the plaintiff; that she indulged in alcoholic beverages to excess; has been in considerable difficulties by reason of her excessive drinking; remained away until all hours of the night and morning, and her conduct has had a serious effect upon the plaintiff to the extent that he has had to leave the matrimonial domicile to protect and safeguard his health and well being. Plaintiff has not lived or cohabited with defendant since the 10th day of June, 1945.

WHEREFORE PREMISES CONSIDERED PLAINTIFF DEMANDS:

(1). That on final hearing plaintiff be awarded a judgment of absolute divorce from the defendant on grounds of adultery.

(2). That plaintiff be awarded judgment against corespondent, Hendrix, for reasonable counsel fees and costs of suit.

(3). That at trial hereof the Court award to plaintiff clear title to Lot No. 9 in Square 1282 with improvements thereon and Lot 173 in Square 1254 with improvements thereon and establishing that because of defendant's adultery, she has forfeited all right, title, claim and interest in the real estate held by the parties as tenants by the entirety.

(4). That plaintiff have judgment against defendant for possession of all stocks, bonds and securities of the parties held in individual names or jointly, and that defendant be ordered by the Court to surrender possession of same forthwith to plaintiff and to execute necessary release and assignments.

(5). That at the trial hereof the Court determine and adjudge a fair and equitable property settlement for plaintiff with respect to all real estate and personal property, and that same be partioned (sic) and/or divided and an order issued directing property be sold and the proceeds divided in proportion to the interest and/or shares of each.

(6). And for such other and further relief as to the Court may seem just and proper.

/s/ ALEXANDER CAMPBELL

/s/ FRANCIS W. TAYLOR

Attorney for Plaintiff

1010 Vermont Avenue, N. W.

Washington, D. C.

DI. 6523

DISTRICT OF COLUMBIA, SS:

ALEXANDER CAMPBELL, being first duly sworn on oath according to law deposes and says that he has read the foregoing complaint by him subscribed; that the
238 allegations made of his own knowledge are true and those stated upon information and belief he believes to be true.

/s/ ALEXANDER CAMPBELL

Subscribed and sworn to before me this 26th day of September, 1945.

/s/ HARRY C. FELDSTONE

Notary Public, D. C.

* * * * *

Answer of Defendant, Kathleen Campbell

239 For answer to complaint filed herein, the defendant, Kathleen Campbell, respectfully shows to the Court as follows:

1. She admits the allegations of paragraphs one, two, three, four and five of the complaint.

2. Prior to her marriage to plaintiff herein she purchased the premises 1535 34th St. N. W. and 1607 31st St. N. W. The purchase was made with her own money.

3. In answer to paragraph seven of the complaint the defendant avers that prior to the marriage, plaintiff had purchased fifty shares of Republic Steel Stock. He had, however, made a loan using said stock as collateral and following the marriage the defendant paid for this debt and thereafter the stock was held jointly by both parties. The various War Bonds mentioned were purchased with joint funds by plaintiff and defendant. The Standard Oil, United States Steel, Radio Corporation, Philip Morris and Montgomery Ward stocks were purchased by defendant prior to her marriage and at no time has plaintiff made any payments on said stock or repaid any loans made to defendant.

240 4. The allegations of paragraphs eight and nine are denied.

5. In answer to paragraph ten defendant avers that on or about April 6, 1945, plaintiff deserted defendant.

6. She denies the allegation of paragraph eleven.

WHEREFORE, having fully answered, she prays that the complaint be dismissed.

/s/ KATHLEEN CAMPBELL

Subscribed and sworn to before me this 24th day of October, 1945.

/s/ LOUIS HOROWITZ
Notary Public, D. C.

/s/ JOHN T. BONNER
Attorney for Defendant

* * * * *

Judgment for Absolute Divorce and Division of Property

241

(Filed March 19, 1947)

This cause came on to be heard at this term of Court on the complaint of Alexander Campbell and the answers thereto by Kathleen Campbell and Frank Hendrix, upon **consideration thereof and the testimony adduced in open Court**, the Court finds as facts that all parties are residents of the District of Columbia and have been for a **sufficient period of time to give this Court jurisdiction**, and that the real and personal property involved is situated and located in the District of Columbia; that plaintiff and defendant were married the 19th of April, 1941, in the State of Virginia and that no children were born of the marriage. On, to wit, August 18, 1945 defendant committed adultery with the corespondent named herein; that **said adultery has not been excused or condoned by plaintiff** and the parties have not lived together since that time. That at the time of the marriage, defendant was the owner in fee simple of premises 1607 31st Street, Northwest and 1535 34th Street, Northwest, in the District of Columbia; 10 shares of Philip Morris stock, 20 shares of Standard Oil stock, 20 shares of Packard Motor stock, 5 shares of Montgomery Ward stock, 5 shares of U. S. Steel stock.

242 At the time of the marriage, the plaintiff, Alexander Campbell was the owner of 50 shares of Republic Steel stock, 10 shares of City Service stock, 150 shares of General Realty stock, 50 shares of American Hide and Leather stock. During the period of marriage, plaintiff, Alexander Campbell acquired in his own name, one \$25.00 U. S. War Bond and the defendant acquired in her own name two \$25.00 U. S. War Bonds. During the period of the marriage, the parties acquired in their joint names, one \$50.00 U. S. Savings Bond and eighteen \$25.00 U. S. Savings Bonds.

1. The Court concludes that the plaintiff is entitled to an absolute divorce by reason of the adultery of the defendant.

IT IS THEREFORE, THIS 19 DAY OF MARCH, 1947 ADJUDGED AND DECREED That the plaintiff, Alexander Campbell be, and he hereby is awarded an absolute divorce from the defendant, Kathleen Campbell.

2. That the defendant, Kathleen Campbell, be and she hereby is awarded title to premises 1607 31st Street, Northwest and 1535 34th Street, Northwest, in the District of Columbia.

It is Further Ordered That the plaintiff shall forthwith sign, acknowledge and deliver to defendant the deeds conveying the property to defendant.

The defendant, Kathleen Campbell, is also awarded title to the stocks and bonds mentioned above which were owned by her at the time of marriage or acquired by her in her own name during the period of marriage. She is also awarded title to one-half of the 19 bonds acquired in the name of she and the plaintiff during the period of marriage. Plaintiff, Alexander Campbell, is awarded
243 clear title to the stocks and bonds owned by him at the time of marriage and one-half of the 19 bonds acquired in the name of he and the defendant during the period of marriage. Both plaintiff and defendant are hereby directed to sign and deliver such documents as are necessary to carry out the provisions of this order.

It Is Further Ordered That this judgment shall not take effect to dissolve the bonds of marriage until the expiration of the time allowed for taking an appeal or until disposition of an appeal taken, or in any event until the expiration of six months after the date hereof.

/s/ EDWARD M. CURRAN
Justice

* * * * *

Trial Proceeding

4 Mr. Taylor: May we approach the bench, your Honor?

(Counsel for both sides approached the bench and the following occurred):

Mr. Taylor: As far as procedure here is concerned, your Honor, I have an adultery charge to prove. Then there is a division of property. Then there is an alienation of affection case. I have five or six witnesses for the adultery. Then I have different witnesses as to the property. If the

5 Court would approve, and Mr. Bonner agrees, I would like to put him on to establish the divorce, and then go into the property settlement. In other words, I could release my plaintiff and put him back on the stand, as far as the property settlement is concerned, later in the case.

The Court: All right. Get your adultery out of the way, then your property settlement, then your alienation of affections.

* * * * * * * *

Alexander Campbell

6 Direct examination

By Mr. Taylor:

* * * * * * * *

Q. Is the defendant, Kathleen Campbell, your wife? A. Yes.

Q. When and where were you married? A. I was married in Alexandria, Virginia, on April 19, 1941.

* * * * * * * *

7 Q. Are there any property rights involved? A. There is.

* * * * * * * *

8 Q. Will you state the circumstances of the separation? Tell what happened on that date. A. Well, I

left several times before that on account of drinking and I couldn't sleep at night, and I took a room, and I used to stay in the room, and then I would come back again. I went to live with her mother one time.

* * * * *

172 Recalled Direct Examination

By Mr. Taylor:

Q. Directing your attention to the 19th day of April, 1941, that was the date you were married. What was your business? A. I was a carpenter.

Q. Were you employed at that time? A. I was.

Q. Were you employed the rest of the year 1941? A. I was, very regular.

Q. With whom and by whom were you employed in 1941? A. I was employed by Driscoll Construction Company from New York at the time we got married.

Q. How about in 1942? A. In 1942 I worked at the Pentagon all year—Pentagon Building.

173 Q. In 1943 where were you employed? A. I was employed by the Ross Engineering Construction Company, Potomac Park.

Q. In the year 1944 where were you employed? A. Well, I had different employment all over. I worked for Brooks Brothers—four or five different contractors.

Q. Were you employed up to the time you and your wife separated? * * * A. I was.

Q. What real estate is owned by you and your wife? A. 1607 Thirtyfirst Street and the property over 34th Street.

* * * * *

174 Q. Was your wife the owner of that property at the time of your marriage? A. She was.

* * * * *

Q. I am talking about the real estate—do you know how much was due on it? A. No.

Q. Do you know whether or not she was in arrears in payments? A. She told me she was in arrears.

Q. Did you go to Columbia Federal Loan Company with her? A. No—yes, I did.

Q. Did you make arrangements to make payments there? A. I never made no arrangements.

Q. Do you know whether the payments increased or decreased? A. When I went there she was supposed—she said she was five months in arrears, and she says that they were going to jump her from \$125 to \$175 to make the payments. I told her that was all right we would do that.

Q. At the time you were married did you own any 175 stock? A. I did.

* * * * *

By the Court:

Q. Did you own 50 shares of Republic Steel at the time you married Mrs. Campbell? A. I did.

* * * * *

176 By Mr. Taylor:

Q. What were your earnings in the year 1941? What were your weekly earnings at the time of your marriage? * * * A. Well, I made about \$80 a week over Columbia Pike, putting up the Navy Department.

Q. What did you do with your money? A. I handed it over to Mrs. Campbell.

* * * * *

177 Q. At the time of your marriage or a short time thereafter did you have any agreement with Mrs. Campbell? A. She said to me "Now you have done so good, now the work is done on the house I think the practice is to put your name on this house." I never gave that a thought until she mentioned it. She made me quit several jobs to do, work in the house.

* * * * *

Q. Did you agree to make payments on the property? A. I told her I would take the property in the standard length of time. She was worried about it.

* * * * *

Q. Did you make the payments personally or did you turn the money over to her? A. I turned the money over to her.

178 Q. Do you know how much money was placed on the stocks down there in Virginia?

A. \$1500.

Q. Did you borrow any money from the Riggs National Bank—you and your wife? A. We got that loan on the stock, \$1000.

Q. Was any money paid on the stock in Virginia? A. When it came up to Washington, there was.

Q. How much did you pay on that at that time? A. The first payment I made was \$250.

179 The Court: To whom is the check made payable?
Mr. Taylor: Riggs National Bank.

The Court: What is the date?

Mr. Taylor: April 12, 1943.

Q. Did you make any other payments on the loan? A. The first payment that was made at that, I made the payment. It was the payment of \$105.

180 Q. In whose handwriting is this check made out (Handing a document to the witness)? A. That is made out in Mrs. Campbell's handwriting.

Q. And this other check is made out in whose handwriting (Handing a document to the witness)? A. It is hers.

Q. But they are in your account? A. In my account

By the Court:

Q. Who signed it? A. I did.

By Mr. Taylor:

Q. Did you make any other payments on the loan? I am just asking you, did you? A. I did.

181 Q. In what form did you make the payments? A.
 She said she was dealing in that bank for years, and
 it sounded funny for me to be making the payments, and to
 give her the money.

By the Court:

Q. So the only payments you made by check were \$355?
 A. That is all. I put my stock up as collateral.

By Mr. Taylor:

* * * * *
 Q. * * *. You say that you gave your wife the money
 because she said she had been dealing with the bank. A.
 I did.

182 By the Court:

Q. What do you mean? You gave her cash? A. I handed
 her cash as I got my pay from where I was working. I
 gave it all to her. This is money that I had in New York.

By Mr. Taylor:

Q. Did you pay any real estate taxes on any of the houses?
 A. If she wouldn't be home when they would come due, I
 would sign my check and send it. Maybe I made three or
 four payments.

* * * * *
 Q. How large is the house on 31st Street? A. It's got
 twenty-one rooms in it.

* * * * *
 Q. Since 1941 did you make any repairs to that property
 at all? A. I did.

183 Q. How many floors in the house? A. Four floors.

* * * * *
 Q. In the year 1941 will you tell the Court what you did
 to the house? A. The top floor was in very bad condition
 It is an old house, seventy years old, I am told, and
 184 the paper was falling off, and she had it rented for

\$75 a month when I came there, but the paper was falling off and the plaster in bad condition. So I spent all Saturdays and Sundays working on the top floor, had all the paper scraped off. So I painted the kitchen and gave the rooms three coats of paint. The work is there to be seen.

Q. How about floors? A. I scrapped the floors with steel wool.

Q. How about the windows? A. I took all the windows in and put some new stiles in there and some new rollers, because they were so old. You couldn't buy them at the mill. I made some of them by hand. I made full screens for the top floor.

* * * * *

Q. How long have you been in the carpentry business or trade? A. Twenty-eight years.

Q. Have you estimated work? A. I did.

185 Q. In your opinion based on your experience, what was the value of the work you did on the floors and the walls on the fourth floor in 1941?

* * * * *

A. About \$550.

* * * * *

Q. The 4th floor was rented for \$150 after you did the work on it? A. Yes, from \$75.

Q. In 1942 what did you do? A. I worked on the second floor, put all new cords in the windows, fixed the windows up, took all the paper off and gave the thing three coats of paint. Bathroom and kitchen—new cords, new screens—most of it.

* * * * *

186 Q. Based on your experience, what is the value of the work that you did on the house in 1942? A. Well, around \$560 for that work.

* * * * *

Q. What did you do in 1943, Mr. Campbell? A. On the first floor I scraped the paper and painted one room. I renovated the kitchen, took out the dumbwaiter, and fixed the front porch, and built an extension to the back of the house.

Q. What do you mean by an "extension"? Will you tell us just what you did. A. Well, there was an old porch that had been rotting away with the railing, so I shored up the roof and I got it up—everything all out—and I built up the brick walls from the areaway, put in two new piers, six windows, and the bathroom window was seven. Then I closed the areaway down below, with a new window on each side, not a new window, but I put windows in there, and I shingled it, and I put oak flooring down on it, and put the ceiling on the frame—installation—framed out the bathroom, and all that.

187 Q. Exclusive of the actual work that someone else did, what was the reasonable value of the work that you put in that property? A. Well, I never would consider doing that work for anybody under sixteen or seventeen hundred dollars.

Q. I ask you for the reasonable value, Mr. Campbell. Will you give it to me? A. It is impossible to do it any cheaper.

Q. \$1,600? A. \$1,600.

Q. Did you do anything else to the property? A. On the ground floor I renovated the kitchen and tore out the partitions.

Q. What floor? A. Basement; basement floor. I renovated the kitchen. There was a lot of closets—closets and pantries. I tore them out and made a big kitchen. I put flooring down there. I put a drainboard in there and put a big locker or closet under the stairway, in the kitchen. Then I worked on the front room, from the basement, about 27 feet long. I tore all the plaster and tile off, and I put in new ceiling, and I renovated the whole room, a new closet and all. When I renovated the basement Mrs. Campbell was getting \$60, and the rent went up from \$60 to \$125.

188

Q. What is a reasonable value of the work you did in the basement?

* * * * *

A. \$1200.

* * * * *

190 Q. Did you buy the equipment? Did you buy the material? A. I bought most of the material, but sometimes I wouldn't be home, I would be working and the material would come, and whoever was around paid for it. Sometimes her mother paid for it, and sometimes Mrs. Campbell paid for it.

Q. Does the estimate that you have given for the value mean for the material you have furnished and the work you have done? A. Yes.

Q. Did you have anyone helping you on any of these jobs? A. I did. I had another carpenter helping me for two weeks painting and fixing windows. I had him with me about three weeks on the back porch.

* * * * *

191 Q. Did you during your employment buy any war savings bonds? A. Yes, when I worked at the Pentagon Building I bought war bonds.

* * * * *

192 Q. How many bonds did you buy? A. All told, I bought twenty-three—twenty-two \$25 bonds and I gave \$125 to Mrs. Campbell.

* * * * *

By the Court: With your own money? A. With my own money.

* * * * *

By Mr. Taylor:

193 Q. Did anyone work with you while you were doing some of these or all of these repairs on the house?

A. Yes. I had another carpenter with me, by the name of Michael Tighe. He worked with me two

194

weeks, working on the second floor, putting in cords and painting with me.

Q. Was that the only work he did on the house? A. Worked about three weeks on the porch. I promised to pay him back. He had bought a house, and I promised to repay him by working there for him.

* * * * *

Q. At the time of the marriage you testified that Mrs. Campbell was indebted to her sister for \$1,300? A. I did.

Q. Is that correct? A. \$1,150. That was what was paid to her.

Q. Did you pay that money? Did you pay that debt off? A. I give Mrs. Campbell the money to pay it off.

Q. Did you give it to her in the form of cash? A. I give it to her in cash, yes, some of the money I took with me from New York.

* * * * *

195 Q. Did you pay any taxes on the house on 34th Street? Is that 34th Street? A. Yes. I paid \$375 for work that was done by a contractor for work that was done before I came there.

* * * * *

Q. Did you pay \$375 or settle the claim for less? A. I think it was \$275 or \$375.

Q. What is the trust on the house on 34th Street? A. \$1,534.

196 Q. I show you these checks. Can you identify them (Handing documents to the witness)? A. Yes.

Q. What are they? A. That's what I paid the tax on 34th Street.

Q. Did you pay them four times? A. I imagined so. I don't remember. That's four in all.

* * * * *

Cross Examination

By Mr. Bonner:

Q. You tell us your wife has an income of \$500 on this house from Richmond (rentals)?

Mr. Taylor: He did not testify to that.

A. I never testified, to my knowledge.

* * * * *

198 By the Court:

Q. That is \$505 a month. A. That's the accurate figures right there.

* * * * *

199 By Mr. Bonner:

Q. Do you know how much money you made in 1942, Mr. Campbell? A. Oh, I don't know; probably somewhere in the neighborhood of \$3,000.

* * * * *

201 Q. Mr. Campbell, I asked you very clearly, did you file a District of Columbia income tax? A. Oh, District?

Q. Yes. A. No; no. I thought you meant Govern-
202 ment tax. No.

* * * * *

Q. Is that your answer? A. Every tax I had to pay, I paid it.

* * * * *

203 Q. Did you buy clothes for her? A. I paid for that coat she has on now—I mean to say, I paid for it to be altered.

Q. You paid to have it altered? A. I paid \$90 to have it altered.

Q. You paid to have altered what someone else gave her.

* * * * *

Michael Tighe

* * * * *

204 Recalled Direct Examination

By Mr. Taylor:

Q. Mr. Tighe, what is your business? A. I am a carpenter, sir.

* * * * *

Q. You heard Mr. Campbell testify as to what he did at 1607 31st Street, Northwest, as far as carpenter work is concerned? A. That's right.

Q. Did you have occasion to see that work or help do any of it? A. I helped him do some of it, yes.

Q. What work did you help him do? A. That extension on the back there. That porch that was turned into an extension or fixed up—I worked on that, and I give him quite a hand making screens and stuff like that.

* * * * *

Q. With reference to this job that you did on the back of the house, the extension to the back of the house, that Mr. Campbell estimated to be worth \$1,600, in your opinion is that a fair value for that work that was done?

* * * * *

Q. Is that a fair value for the work he did on the back of the house? A. I think it is very cheap.

Q. You heard him testify as far as the fourth floor is concerned—the floors, the walls, and the paint? A. Yes.

Q. He estimated it to be worth \$550. Is that reasonable? A. Yes, I think that is very reasonable.

Q. And on the second floor he put in a toilet bowl and he fixed the floors and the walls. A. Yes.

Q. And the kitchen on the first floor, and he estimates it to be \$560. Is that a reasonable value? A. Yes, I think so.

* * * * *

Q. You heard what he testified as far as the work he did in the basement is concerned? A. Yes.

Q. In your opinion, is that a fair and reasonable estimate of the value of the work he did—\$1200? A. Well, I know what he was going to do there, and I think that is pretty reasonable and cheap—a fairly cheap job.

* * * * *

207 Q. Has he been regularly and gainfully employed during that period of time? A. Yes. He has been going along pretty good.

By the Court:

Q. Has he been regularly employed? That is the question. Does he work every day? A. No; we don't work every day.

Q. Does he work every week? A. Well, we—

Q. Not "we", Mr. Campbell. A. Oh, Mr. Campbell,
208 he's working pretty good. I would say he works two, three, and four months at a time.

Q. Then what happens? A. Then the job finishes up. Then probably he might be out of a job for a week or two, or something.

* * * * *

156 Mr. Bonner: If your Honor please, we have some testimony. I do not know whether it will aid the Court or not.

The Court: What is that?

Mr. Bonner: We can show that Mr. Campbell's entire interest all during the period of the marriage was to acquire the property of his wife, to get his name on that property, and that when he left his idea was to grab it all.

Do you think the Court would like to hear that?

157 Mr. Taylor: I do not think his intention will make any difference, unless they can show he made some contributions to this property. We have already said that the mere fact of the adultery did not forfeit her interest in the real estate, so it is showing what he did that becomes material.

The Court: I am not concerned much about the disposition of the property.

Mr. Bonner: You are not?

The Court: No, because I am going to award all the property that she had to her.

Mr. Taylor: May I put the bankers on?

The Court: What are the bankers going to testify?

Mr. Taylor: They are going to testify about the condition of the account.

The Court: She has testified about that.

* * * * *

Mr. Taylor: I am going also to show that he went on the mortgage in 1942, when the house went over.

The Court: Who went on the mortgage?

Mr. Taylor: This plaintiff.

158 The Court: You mean after she put the house in the joint names?

Mr. Taylor: Yes.

The Court: He would have to go on.

Mr. Taylor: No, not necessarily. Lots of property is sold without going on the mortgage.

Call the Columbia Federal Loan & Savings Association.

The Court: You are trying to tell this Court that when this property was put in the joint names of Mr. and Mrs. Campbell as tenants by the entirety, if there is a mortgage on this property notes on the property have to be signed only by one of the parties? Is that what you are saying?

Mr. Taylor: Unless the loan was renewed, or something like that, at the time. Certainly it would not be necessary for the husband to go on the note.

The Court: Did he?

Mr. Taylor: Yes.

The Court: Why?

Mr. Taylor: Probably this Association wanted it, but I am not saying that it has not been done otherwise.

The Court: All right.

* * * * *

Thomas W. Blumenauer, Jr.

159 Direct Examination.

Mr. Taylor:

* * * * *

Q. Where are you employed? A. Columbia Federal Savings & Loan Association.

Q. In response to a subpoena duces tecum, have you brought certain records of the Columbia Federal Savings Account with reference to a loan on 1607 31st Street, Northwest? A. I have, sir.

Q. Will you let me see the records? A. (The witness produced some documents.)

Q. Will you check the record there for the nearest date to April 19, 1941, and will you tell us what the balance was? Was there a mortgage on the property on that date? A. Yes, sir.

Q. What is the amount of the mortgage? A. The balance as of the nearest date to April 19, 1941, was \$8,922.09.

Q. Was that a current mortgage or was it in arrears on that date?

* * * * *

A. That is correct. It was in arrears on that date \$525.05.

Q. What were the monthly payments under the 160 contract at that time? A. \$117.87, including taxes.

Q. Who is the maker of that mortgage as of that date? A. Kathleen Hill Campbell on April 19, 1941.

Q. Do the records indicate that there was any change in the amount of payments to be made on that mortgage in the year 1941? A. We have a memorandum that they should pay \$168.75 a month until the arrears were brought to date.

Q. You say "they." What does the record show as to "they"? A. As of 4-19-41, it was just in the name of Kathleen Hill Campbell, sir.

Q. After that date? The June date. A. According to our records, title changed June 20, 1942.

Q. Was that the date that the change in payments was to be made?

By the Court:

Q. The title was changed to whom on June 20, 1942? A. Alexander Campbell and Kathleen Hill Campbell. That was on June 20, 1942. The arrangement for the increase in payments was made in June of 1941.

161 By Mr. Taylor:

Q. And does it indicate that anyone else came in on that mortgage at that time? A. That anyone else made the payments, you mean?

Q. Yes, A. We have no record of who made the payments.

Q. But the payments were increased? A. Yes, they were.

Q. When did the account become current, if it is current, since the 19th of April, 1941? A. It became current April 20, 1942.

Q. What is its status at this time? A. At this time the arrears is \$118.88.

Q. Now, between the 19th day of April, 1942, and July of 1945 can you tell how much was paid on principal during that period of time? A. The latter date was which date?

Q. April, 1941, to July, 1945. What was the principal balance on April 19, 1941? A. I gave that as \$8,922.09.

* * * * *

Q. What was the principal balance in July of 1945? A. \$4,648.91.

162 Q. Does your card indicate when the mortgage was placed on the property? A. The original mortgage was placed in October, 1938.

Q. And how much was the original mortgage for? A. \$10,000.

* * * * *

Theodore Parker Cowgill.

Direct Examination

By Mr. Taylor:

* * * * *

Q. Where are you employed? A. Riggs National
163 Bank, Farmers Mechanics Branch.

Q. What is your position there? A. Assistant
Cashier and Assistant Manager.

* * * * *

Q. Now, will you look at the record and tell me what was
the date of the first loan? A. It was April 22, 1943.

Q. Now, how much was that loan for? A. \$1,000.

By the Court:

Q. Made by whom? A. Kathleen H. Campbell and Alex-
ander Campbell.

By Mr. Taylor:

Q. Now, was any security deposited on that loan, accord-
ing to your records? A. Yes, sir. It was to secure the loan.

* * * * *

165 Q. Now, in connection with the stock that you say
was signed for by Kathleen Campbell, do your rec-
ords indicate where that stock came from? A. Yes, sir.
That stock was transmitted to us from the First and Mer-
chants National Bank of Richmond, Virginia, in their letter
of April 21, 1943.

Q. And does that indicate why they were holding that
stock? A. Do you want to read the letter? It was trans-
mitted at the request of Mrs. Campbell. Is that sufficient?

* * * * *

Q. And you received the stock as a result of the instruc-
tions in this letter? A. Yes, sir.

* * * * *

166 Q. I notice there is a difference. You say the loan was \$1,000, and the balance in the Richmond account was \$1,500. Do you know how that was taken care of? A. No, sir. This loan was handled by Harry Selby, who has since retired from the bank.

* * * * *

Q. Will you look at the letter again and see if that will refresh your recollection (handing a paper writing to the witness)? A. This would indicate that we sent \$1,500 in payment of that note. I don't know where the other \$500 came from.

Q. So the proceeds of that loan went to Virginia? A. Yes.

Q. Directing your attention to a second loan you 167 have there, do you have a second loan? A. Yes.

Q. When was that taken out? A. That was dated September 20, 1944.

Q. How much is the amount of that loan? A. \$700.

Q. By whom was that made out? A. Kathleen H. Campbell.

Q. Was that also a secured loan? A. Yes.

Q. Will you tell us what stocks were held as deposit for security? A. 5 shares of Montgomery-Ward, 20 shares Packard Motor Car Company, 20 shares Standard Oil Company, 5 shares Philip Morris & Company, Limited, 5 shares United States Steel Corporation.

All those were signed by her, Kathleen H. Campbell. We only have one signature.

Q. Is that account paid in full? A. Yes, sir.

Q. When was the last payment? A. September 4, 1945.

Q. When was the last payment in that first account for \$1,000? A. April 17, 1944.

* * * * *

68

Kathleen Hill Campbell.

74 Cross Examination

89 Mr. Taylor:

Q. Do you own any real estate in the District of Columbia? A. I do.

Q. Where is it located? A. 1607 31st Street, Northwest; 1535 34th Street, Northwest.

90 Redirect Examination

By Mr. Bonner:

Q. How did you acquire that property, Mrs. Campbell?
A. I bought that property before—I bought it in 1937, and I bought that property with money of my own, and one month after I was married to Mr. Ketner—I mean Mr. Campbell, he made my life unbearable—

Q. Do not go into that. These two pieces of property were acquired before you married Mr. Campbell? A. Yes.

The Court: There is no demand made for the division of this property?

Mr. Taylor: Yes, sir.

91 By the Court:

Q. Is that all the property you own? In whose names are 1607 31st Street and 1535 34th Street? A. Your Honor, I put Mr. Campbell's name on my property, and one month after I married Mr. Campbell he made my life unbearable. I almost had a nervous breakdown, until he coerced me to put his name on my two pieces of property as joint properties. I owned the property long before I knew Mr. Campbell.

Q. No part of Mr. Campbell's money went into the purchase of it? A. Absolutely not one cent.

* * * * *

92 By Mr. Bonner:

Q. Do you have certain personal property? A. I own some stock that my first husband, Mr. Ketner, gave me in 1927, and that is in my name, and Mr. Campbell forced me to change that.

* * * * *

By the Court:

Q. Wait a minute. There are 50 shares of Republic Steel. A. That is in Mr. Campbell's name and my name, which we both bought together. That is in joint tenants name.

Q. Wait a minute. 22 War Bonds, maturity value, \$25. A. It belongs to Mr. Ketner—I mean Mr. Campbell and myself.

93 Q. You both bought them? A. Yes.

Q. One \$50 War Savings Bond. Is that the same thing? A. I bought that.

Q. You own that yourself? A. Yes.

Q. Out of your own money? A. Yes.

Q. 150 shares of General Realty & Utility Corporation. A. That is Mr. Campbell's.

Q. Who has possession of it now? A. I have it, but that is in his name.

Q. 50 shares of American Hide & Leather. A. Mr. Campbell.

Q. 20 shares of Standard Oil of Kentucky. A. That is mine.

Q. Who bought it? You? A. Mr. Ketner bought it for me.

Q. 5 shares of United States Steel. A. That is mine.

By Mr. Bonner:

Q. Were they acquired prior to your marriage to Mr. Campbell? A. Yes, 1927. That was the year I married to Mr. Ketner.

By the Court:

94 Q. 5 shares of Radio Corporation. A. That is mine.

Q. 5 shares of Philip Morris. A. That is mine.

Q. Acquired before your marriage? A. Yes, sir.

Q. 5 shares of Montgomery-Ward. A. That is mine.

Q. Acquired prior to your marriage? A. Yes, Your Honor.

Q. Did you borrow \$1,500 on these stocks at one time?

A. From my sister, Mrs. Russell Parrish, and I put up my stock for security.

Q. You borrowed \$1,500? A. From my sister, Mrs. Russell Parrish, which Mr. Bonner has the cancelled checks written in my handwriting.

Q. What is your sister's name? A. Mrs. Russell Parrish.

Q. Has that been repaid? A. Yes.

Q. Who repaid it? A. I did.

Q. Yourself? A. Yes.

Q. Your husband did not repay it? A. No.

* * * * *

95 Q. Did you pledge any of your personal property for loans advanced to you at any time? A. I borrowed—You mean on my stock?

Q. On any personal property. A. Yes. I borrowed several times on that, but only to remodel the house.

Q. Did the plaintiff repay the sum of \$1,350 on personal property of yours to secure loans? A. I paid it.

Q. He did not put up any? A. No. As a matter of fact, Mr. Campbell has worked less than half the time during the time I was married to him.

The Court: Now, about this stock that was owned by the defendant, personal stock that she says was in her name and owned by her and given to her by Mr. Ketner—that is,

96 the 20 shares of Standard Oil of Kentucky, 5 shares of United States Steel, 5 shares of Radio Corporation, 5 shares of Philip Morris, and 5 shares of Montgomery-Ward—is there any question that she owned that stock at the time she was married?

Mr. Taylor: At the time she was married, no.

The Court: She owned them?

Mr. Taylor, She owned them at the time she married. We raise the point that it was pledged at the time and that we redeemed it.

The Court: The stock was pledged?

Mr. Taylor: We expect to show that it was pledged in Richmond, Virginia, and the transfer of it in 1943 to the Riggs Bank on Wisconsin Avenue. I have the officials of the bank under subpoena.

The Court: And who repaid the loan?

Mr. Taylor: Mr. Campbell.

The Court: Out of his own money?

Mr. Taylor: Out of his own money. He turned his money over to her to do these things with.

* * * * *

97 By Mr. Bonner:

Q. The money that you repaid on these various
98 loans—A. That was for the oil burner that I borrowed to put the oil burner in before I met Mr. Campbell. I borrowed that from the Morris Plan Bank.

Q. That was in 1941, wasn't it? How about a loan of \$1,500 in Richmond? A. Well, my brother-in-law—I borrowed the money, but my brother-in-law's property was left in a trust fund, so in order to show the bank where this money that belonged to the Parrish Estate was being spent, I had to allow them to hold the stock, so I borrowed the money from the Riggs Bank and brought the stock and let Mr. Cellar, who just passed away, hold it for collateral.

The Court: The plaintiff prays for relief in addition to asking for the divorce, and you are now claiming that the Court award to plaintiff clear title to Lot No. 9 in Square 1282 with improvements thereon and lot 173 in Square 1254 with improvements thereon because of defendant's adultery in that she has forfeited all right, title, claim, and interest in the real estate.

Are you claiming this because of the adultery and admitting that she had owned them at the time she married the plaintiff?

Mr. Taylor: That prayer and also prayer No. 5 is in the alternative.

The Court: I understand that, but do you contend
99 that this Court should award this property to the plaintiff when this defendant owned the property prior to the marriage on the theory that she is guilty of adultery?

Mr. Taylor: Not in light of the recent decisions we have had. I withdraw that prayer.

The Court: All right. Let us get to Prayer No. 5.

* * * * *

The Court: What personal property and real estate do you have in mind?

Mr. Taylor: 1607 31st Street and 1535 34th Street.

The Court: Upon what theory is the Court going to divide that real estate?

Mr. Taylor: On the theory that at the time this marriage took place we will show that 1607 31st Street was not owned by this defendant outright, but it was subject to a mortgage, which was in arrears; that we made the payments on these mortgages through the common fund to get this thing straightened out.

100 We expect to show you from the title company that in 1941, at the time of the marriage, the loan was in arrears. Since then we have made payments on it, we have made improvements on it, and we have also paid taxes on the little house around the corner.

The Court: What do you mean when you say this was paid by the "common fund"?

Mr. Taylor: Mr. Campbell gave the money to Mrs. Campbell for that purpose.

* * * * *

The Court: You cannot show, then, that the mortgages were paid off by moneys coming from Mr. Campbell?

Mr. Taylor: Except through her.

The Court: All right.

* * * * *

By Mr. Bonner:

Q. Were these mortgages paid off by money from Mr. Campbell? A. No.

Q. How did you make your living at that time? A. The income of the house.

Q. You have two properties rented, have you not? A. Yes, and I had an antique shop. It has been run as an antique shop, 34th and Volta Street, and I would say one of the most attractive shops in Georgetown.

* * * * *

101 Recross Examination

By Mr. Taylor:

Q. * * *. Now, Mrs. Campbell, did you have your stock—the stock that you enumerated Standard Oil of Kentucky, United States Steel, Radio Corporation, Philip Morris, and Montgomery-Ward, pledged as a loan in Richmond, Virginia, at the time of your marriage?

* * * * *

A. Yes, in order to put in my basement apartment before I married Mr. Campbell.

* * * * *

102 Q. When was that stock redeemed and brought to Washington? A. I don't remember the year. You have the bank examiner. They will be glad to give you the dates.

Q. Was it in 1943? A. 1943. I don't recall. I am sure the bank will be glad to furnish you with the date.

* * * * *

Q. When did you buy this stock in Republic Steel? When did you and Mr. Campbell buy this stock? A. Mr. Campbell bought that stock prior to our marriage, but he owed some money on it, and I helped him pay the balance of the Republic Steel, and then he put his name—we put that stock in joint tenancy—Republic Steel.

Q. Now, when you brought this stock up from Richmond, Virginia to the Riggs Bank—A. Yes.

Q. * * * Was your stock the only stock pledged on the loan then? A. That is the only stock—Now, wait a minute. I can't recall whether it was Republic Steel or whether it was all my stock. I rather think it was all my stock. I won't be positive.

103 Q. What did Mr. Campbell do when he was first married to you? A. He didn't do anything when I first was married to him.

Q. He was not working? A. No. He had just come down from New York, but it seems Mr. Campbell was very interested in acquiring my property. One month after I married Mr. Campbell he made my life unbearable. I am sure if there was not a little bit of property involved, Mr. Campbell wouldn't be in Washington today.

104 Q. When did you deed the property over to Mr. Campbell? A. You will see the date there. You have all the dates. I told the Judge I was in an intoxicated state when I signed those dates, because otherwise if I was in my right mind like I am this morning I wouldn't have done so.

Q. When did you deed it over to him, if you know? A. I don't remember the date.

Q. Was it before the month had elapsed? A. What do you mean?

Q. You say that a month after you married him he made your life intolerable. Was it in that period when everything was sweet and rosy? Was it in that period or later? A. Mr. Campbell left me three times.

Q. I am asking the questions. Will you answer them? A. What is it?

Q. Was it during the time your marriage was happy that you turned the property over to Mr. Campbell? A. No.

Q. When was it, then? A. You have the date, Mr. Taylor. I told you I didn't remember.

Q. Did Mr. Campbell work at all while he was with you? A. I would say that he did a little tacking and one thing and another that most men do in their homes. Is it customary for a wife to pay her husband?

* * * * *

105 Q. Was he gainfully employed from 1941 on? A.

Not all the time, no. The most work, to my knowledge, that he did was at the Pentagon Building.

Q. How much did he make a week there, if you know? A. I don't know.

Q. What did he do with his money? A. Well, you ask him.

Q. Well, I am asking you. Did he give it to you? A. He gave me a little. He contributed as far as food, but when I married Mr. Campbell he came to my house with a ragged suitcase.

Q. Just answer the question.

Mr. Bonner: She is answering the question.

The Witness: I am.

Mr. Campbell came to my house with a ragged suitcase and didn't have any clothes. I took him to New York and spent three or four hundred dollars on his wardrobe. When he came to my house he didn't have a second shirt. When he left the house he had thirty or forty—hardly a change! Ask him if he didn't buy three suits of clothes up at Howard's in New York.

If I give you something and then you turn around and take it, are you contributing?

* * * * *

106 By Mr. Taylor:

Q. Mrs. Campbell, what did Mr. Campbell do with his money? A. Well, he gave me a very small portion, but not a regular—

Q. Let us go to 1941. What did he do? A. Well, he didn't work for quite a long time, and then the first, I should say, regular job was at the Pentagon Building.

Q. What was his average earnings there? Do you know? A. Well, I don't know.

Q. Did you ever see any of his pay envelopes. A. Sometimes, not always.

* * * * *

107 Q. Now, answer my question. Were you or were you not up to date on payments on your mortgage on 31st Street, in 1941? A. I may not have been quite up to date. I may have been one or two payments in arrears, but the properties were never in any danger.

Q. Were you in debt to the tune of \$1,500 on your stock in Richmond? A. I was in debt \$1,500 to put it in the house.

Q. Were you in debt to your sister for \$1,350 for jewelry that you had pledged to her or that she had redeemed? A. Yes.

* * * * *

By the Court:

Q. What was the amount of the mortgage on 1607 31st Street, Northwest, in 1941? Do you recall? A. No, I don't know, Your Honor.

Q. Was the mortgage outstanding on 1535 34th Street, Northwest in 1941? A. Oh, yes. I pay that off every month.

Q. You pay both of them off every month? A. Yes.

Q. You do not know what the amount was in 1941
108 on both houses? A. No, I don't. I am very sorry.

Q. Were you in arrears in payments on both mortgages? A. I would say maybe one payment, but of no decided amount.

Q. You borrowed \$1,500 and put up as collateral stock, for improvements to the house. A. Yes.

Q. Which house? 1607? A. 1607, yes.

Q. You pledged your jewelry to your sister for \$1,350?
 A. That was years ago, and I paid Mr. Harry Thorpe to do the improvements.

Q. When you borrowed money from your sister was that for improvements, too? A. On 34th Street, yes.

Q. On 34th Street? A. Yes.

Q. Has the bank in Richmond been paid back? A. Yes.

Q. Who paid it? A. I did.

Q. With your money? A. Yes.

Q. Or money advanced by your husband? A. No;
 109 my money.

Q. Has your sister been paid? A. Yes.

Q. Who did? A. I did.

Q. With your own money? A. Yes.

Q. Not from any money received from Mr. Campbell?
 A. No, the income from the house paid it.

By Mr. Taylor:

Q. When did you put the bathroom in that you talked about, that you had to have? A. I put that in—Mr. Campbell left April 6, 1945, * * * I think he left April 6, 1945. I put that in several months. I borrowed money on that—I think it was \$900—which I paid back.

Q. You are talking about the \$1,500? What did you do with that? A. I put my basement apartment in 1607.

Q. All the rooms? A. All the major improvements. One room Mr. Campbell tacked some of that wallboard around.

Q. When was your sister paid back? A. Mr. Bonner, do you have those checks? You will see.

Mr. Bonner: Do you want the witness to refresh her memory?

110 Mr. Taylor: Yes, let her refresh it. (Mr. Bonner handed some documents to the witness).

The Witness: This is 1942. Here they are, Your Honor.

By Mr. Taylor:

Q. Just let me see them. A. 1942 and 1943.

Q. 1942 and 1943 you paid your sister back? A. Yes.

Q. Do you know when the property was deeded to you and Mr. Campbell as tenants by the entirety? A. You mean when I changed the deed?

Q. No; when it came back to both you and your husband, when you deeded it to a straw party. Was the title in his name a great length of time or did it come immediately back to you?

Mr. Bonner: If you know. A. I don't know.

By Mr. Taylor:

Q. Do you know when you got it?

The Court: There is no dispute about this, is there?

Mr. Taylor: No, except when the time came when she gave it over to him, it was not when she said.

The Court: She said she owned the property when she married Mr. Campbell and subsequently she deeded it to a straw, and the straw deeded it back to her and Mr.
111 Campbell as tenants by the entirety. Is that correct?

Mr. Taylor: Yes, except as she tells it, it was done immediately, whereas it was not done for a year.

The Court: You mean the straw held it for a year?

Mr. Taylor: I do not know. That is what I am trying to find out.

The Court: What difference does it make?

Mr. Taylor: She said she married this man and he made her life unbearable thirty days after.

The Court: I am not concerned with that.

* * * * *

116 By Mr. Taylor:

Q. Did you always pay the taxes? A. I think Mr. Campbell paid them twice for me.

* * * * *

BRIEF FOR APPELLEE

United States Court of Appeals

DISTRICT OF COLUMBIA.

*United States Court of Appeals
for the District of Columbia*

No. 9622

FILED OCT 30 1947

Joseph W. Starnes
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ALEXANDER CAMPBELL, *Appellant,*

v.

KATHLEEN CAMPBELL, *Appellee.*

**Appeal from the District Court of the United States
for the District of Columbia**

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United States Court of Appeals

DISTRICT OF COLUMBIA.

No. 9622

ALEXANDER CAMPBELL, *Appellant*,

v.

KATHLEEN CAMPBELL, *Appellee*.

Appeal from the District Court of the United States
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BRIEF FOR APPELLEE

ARGUMENT

1. THE FINDINGS OF FACT MADE BY THE TRIAL COURT WERE SUFFICIENT.

Appellant's complaint that the judgment failed to make certain findings seems unsupported by the judgment itself. He argues that the Court failed to make findings as to the state of the title to the real estate at the time complaint was filed or thereafter. However, a reading of the judgment was that the Court did find that at the time of the marriage, the real property in question was owned in fee simple by the defendant.

The Court further found that at the time of the marriage, the defendant owned certain personal property and that

the plaintiff also owned certain personal property. The trial Court further found that during the period of marriage, each party acquired certain personal property in his or her own name and in their joint names.

It has long been the rule that a finding of fact by a trial Court is made primarily for the purpose of informing the appellate tribunal regarding the underlying reasons for the judgment or decree. Our Courts have constantly held that a decree is sufficient if the findings of facts give a clear understanding of the basis for the trial Court's decision. The attention of this Court is respectfully directed to the *Shellman* and *Brown* cases mentioned on page 9 of the Appellant's brief, wherein the above premises was held to be the law. We know of course that there is a strong presumption in favor of any judgment rendered by trial Courts and the federal rule seems to be that absence of the findings of a particular fact indicates that there was no evidence in the trial below sufficient to sustain such a finding. (*Sonken vs. A. T. and S. F. Fy. Co.* 124 F2 952.)

In considering the sufficiency of the findings made by the trial Court, it is interesting to note that no objection was raised by appellant, nor did he at any time request certain findings by the trial Judge. Appellee respectfully contends that the findings made by the trial Court were sufficient in view of the evidence in the case.

2. THERE WAS NO DISREGARD BY THE TRIAL COURT OF ANY SUBSTANTIAL, UNBIASED AND UNCONTRADICTED TESTIMONY.

Appellant's complaint that the trial Court disregarded substantial, unbiased and uncontradicted testimony seems directed to the fact that two officers of certain banking institutions testified regarding payments made on the real property involved. Their testimony merely showed that certain payments were made at certain times. There was of course, no question about those payments and the testimony of those witnesses added nothing to appellant's case.

As to the testimony of Mr. Tigie, we are faced with a

somewhat different situation. Mr. Tigie testified as to the value of certain repair work done by the appellant. However, his testimony was clearly disputed by appellee when she characterized the work as, "A little tacking and one thing and another that most men do in their homes." The trial Justice was therefore, faced with very conflicting testimony and considering the testimony and demeanor of the witness Tigie, he reached the same conclusion that any fair minded person would find, namely that Tigie's testimony was not creditable. There was therefore, no substantial evidence ignored by the trial Court as appellant contends. Cases cited by appellant deal exclusively with positive uncontradicted and unbiased testimony. The testimony of Tigie was definitely contradicted and as apparently the trial Justice believed, biased.

3. THE JUDGMENT OF THE TRIAL COURT DID NOT CONSTITUTE AN ABUSE OF DISCRETION.

Appellant's third and most important contention is that the division of property was an abuse of discretion by the trial Court. There seems little argument as to the law involved. It having been stated innumerable times that the trial Court's decision must be clearly wrong in order to justify a reversal. The law is equally clear in holding that it is a power and in fact a duty of the trial Court to make an equitable division of the property between the parties in the event of a divorce. We, therefore, are faced with no problem of law but rather with the question. "Is the ruling of the lower Court such an abuse of discretion as to shock the conscience of equity?" To reach an answer to that question, it is necessary to review practically the entire history and the litigations of the parties herein.

We learn that two mature people were married in April of 1941. At that time, the wife was owner of considerable real and personal property which she had acquired many years prior to the marriage. At the same time, she received substantial income from those properties. At that time according to the testimony of the wife, and there

seems little dispute regarding the fact, the husband was an out-of-work carpenter, whose possessions were a ragged suitcase, one shirt and 50 shares of stock which were unpaid for. The parties lived together off and on until June 10, 1945.

During that period, the marriage was several times interrupted by the husband leaving the wife. An insight into the character of husband is given by considering that during one of the separations, he went to live with his mother-in-law; this, by his own testimony. During the period of the marriage, the husband was out of work approximately one-half of the time. His income apparently never exceeded \$2,500.00 per year. By his own testimony, it was about or around \$3,000.00 per year. Sometime after the marriage, the wife after constant urging by the husband, had her real estate placed in their joint names. The only evidence of any contribution by the husband was in the form of two checks totaling \$335.00. It was conceded by the husband that all the other bills were paid with checks by the wife, although he contended that in many instances, he had furnished the money. The wife on the other hand contended that the husband made no contributions whatsoever towards paying the loans on the property. She further testified that during the entire period he lived in her home, his sole contribution was a little money for food. It would seem that any such contributions made would be offset by reason of the fact that the wife provided the husband with a home in which to live, repaid a loan which he had made in order to purchase the Republic Steel stocks, and for at least one-half of the marital period, had fed and clothed him. All this despite the fact that our laws and our social system place the duty on the husband to support his wife. During the period of the marriage, the husband's only support consisted in the items mentioned above and paying for the remodeling of a fur coat. It seems obvious therefore, that this unemployed carpenter received much more from his marriage than is considered due to a husband.

At the trial below, the District Judge must have been impressed with those facts, and it must have shocked him to read the husband's complaint wherein the husband demanded that he be given free and clear, every piece of property both real and personal that the wife had acquired many years prior to their marriage. That demand together with the evidence showing the conditions of the life of the parties is sufficient to give this Court a perfect picture of the appellant herein. It seems obvious this appellant has sought to use the Courts to acquire property to which he has no claim, either legal or moral. The cases cited by appellant in his brief are certainly not in point with the facts presented herein. Appellant claims that the Court indicated little concern about the disposition of the property and that such indication was made prior to hearing appellant's testimony regarding certain repairs and payments he had made on the property. In that regard we should note that appellant's demand was based originally on appellee's adultery.

We should further consider that even though the trial Justice indicated little concern for disposition of property, he permitted appellant to offer what evidence he could regarding payments and repairs made. Appellant was afforded every opportunity to show that he had made substantial payments and repairs. After appellee contradicted appellant's testimony, the trial Justice obviously believed that appellant made little or no such contributions. That belief is certainly justified when we consider appellant's income. We see therefore, if the trial Court was hasty in indicating little concern about the property involved, surely, no error was committed nor was the appellant prejudiced by such indication. The trial Court merely acted to place the parties in the same position they had occupied prior to the marriage. During a few years of marriage, the wife position improved by reason of a reduction of certain of her loans, however, that reduction was made possible by returns from property and investments she had prior to the marriage together with her efforts in

operating a guest home at one of her properties. The husband's position increased in that he was able to repay the loan which he had made on certain stocks and was able to acquire title to those stocks. The one shirt he owned at the time of marriage had increased to thirty or forty with a corresponding increase in other articles of clothing. During the period of marriage, the wife supported herself and for half the time supported her husband. What repairs, if any, the husband made would seem fair repayment by him for the food, lodging, clothing and etc., he had received from the wife.

CONCLUSION

It is respectfully submitted therefore, that the ruling of the trial Court as to disposition of property was just and equitable and should not be disturbed.

Respectively submitted,

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